

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN BRENT R. CROMLEY**, on February 16,
2005 at 3:15 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Brent R. Cromley, Chairman (D)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Duane Grimes (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Trudi Schmidt (D)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Rita Tenneson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 440, 2/14/2005; SB 446,
2/14/2005
Executive Action: SB 324; SB 446; SB 317; SB 281

HEARING ON SB 440

Opening Statement by Sponsor:

SEN. DAN HARRINGTON (D), SD 38, opened the hearing on **SB 440**, Require licensure of specialty hospitals.

SEN. HARRINGTON said the bill came from a situation in Butte where a number of physicians began exploring a new for-profit hospital for the community. It was designed to do expensive surgical procedures for people with insurance coverage. He said St. James Community Hospital and Health Care is important to all the people of Butte's community, and the prospect of another hospital in Butte raised concerns for many people. The issue of specialty hospitals is pending in Congress and should be resolved there. In the event it isn't, this bill gives the Montana Legislature flexibility in these situations.

Proponents' Testimony:

John Flink, Montana Hospital Association rose in support of **SB 440**, read his testimony and included additional information on limited-service providers.

EXHIBIT (phs38a01)

EXHIBIT (phs38a02)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 9.5}

James Kiser, Hospital Administrator, St. James Hospital and Health Care, Butte, MT, asked to have the moratorium extended for 18 months in the event the federal government does not extend it for limited services hospitals. Montana is among five states with the most uninsured people. The bill is not about competition, it is about protecting uninsured within the State. Many hospital services are not self-sustaining, so hospitals cross-subsidize services to cover these.

{Tape: 1; Side: A; Approx. Time Counter: 9.5 - 14.1}

John Solheim, CEO, St. Peters Hospital, Helena, said the issue needs to be resolved at the federal level but, if they don't act, he wants the Legislature, in 2007, to have the flexibility to act on it.

Mike Foster, representing St. James Hospital, Butte; St. Vincent, Billings; Holy Rosary, Miles City; Wibaux Memorial in Harlowton, said this is a very important issue for these hospitals, especially St. James in Butte. A lot of studies have been done

regarding specialty hospitals and Congress wasn't sure how to address this new element in the economic structure of health care. Congress didn't feel they had enough information so they passed a moratorium in the Medicare Modernization Act saying no new specialty hospitals can be built in America until June of 2005. A moratorium extension is being proposed by MedPAC. If that occurs, this adds six months so the Legislature can look at what Congress did. This bill gives Montana participation in a finding a solution.

{Tape: 1; Side: A; Approx. Time Counter: 14.1 - 20}

Mr. Foster presented a letter from **Dr. Nick Wolter, Chief Executive Officer, Deaconess Billings Clinic**, rose in support. His letter refers to some of the recommendations the MedPAC report on specialty hospitals is going to make to Congress.

EXHIBIT (phs38a03)

Opponents' Testimony:

Pat Melby, Montana Medical Association, and the Association of Physicians Practicing Medicine in Montana, opposed the bill. They feel it is a nation-wide turf battle between hospitals, specialty hospitals and physicians. Hospitals have asked for legislation banning creation of any facility that focuses strictly on cardiac care, orthopedic services, or cancer treatment; legislation prohibiting physicians from having a financial ownership in specialty hospitals; resisted appeal of certificate of need; legislation requiring hospitals, long-term care facilities; and primary clinics to provide information to state departments of health on financial liability, sustainability and potential impact on health care access of those kinds of facilities; legislative studies on niche providers, including specialty hospitals; and legislation requiring specialty hospitals to provide emergency services and accept Medicare and Medicare uninsured patients. This bill adopts the emergency services portion. Specialty care facilities already accept Medicare and Medicare uninsured patients. He said adopting this bill would give Montana a disadvantage in competing with medical centers in surrounding states. He suggested an amendment that, if the bill is passed, it sunsets in 2007.

{Tape: 1; Side: A; Approx. Time Counter: 20 - 25.7}

LaDawn Muir, Hospital In-Patient supervisor, Central Montana Surgical Hospital, said they are a specialty hospital, with an ER. They have transfer agreements with nonprofit hospitals under

the Medicare-Medicaid providers law and Corporate Certificate of Public Advantages. Their hospital provides more medical choices. As a profit organization, they pay taxes to the community. Not being able to license until 2007 stifles competition and business opportunities for both the community and the State.

{Tape: 1; Side: A; Approx. Time Counter: 25.7 - 28.2}

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. ESP asked if there was a federal definition of specialty hospitals. **Mr. Foster** said the Medicare Modernization Act defines specialty hospitals and that definition is written up in **SB 440**.

SEN. CROMLEY asked about a grandfather clause pertaining to the two specialty hospitals already in existence. **Mr. Flink** told him the federal moratorium includes the grandfather clause covering existing hospitals as of November 18th, 2003. He asked **Mr. Niss** to clarify that in an amendment to continue to grandfather those facilities if the federal moratorium expires and the Montana moratorium took affect.

SEN. CROMLEY asked **Mrs. Muir** if their license was the same as general hospitals. She answered yes. **SEN. CROMLEY** asked if they could continue if the moratorium failed. **Mrs. Muir** had concerns about the grandfather clause as it wasn't specific in the bill.

SEN. ESP asked **Mary Dalton** if the two specialty hospitals would qualify for licensure based on the criteria in the proposed definition. **Mrs. Dalton** answered that since they read the bill in relationship with the moratorium, they would be licensed.

SEN. ESP asked if they were required to do all the things in the definition as general hospitals. **Mrs. Dalton** told him it was her understanding that hospitals do not have to provide 24-hour emergency care as such as general hospitals.

SEN. WEINBERG asked **Mrs. Dalton** if testimony regarding whether or not specialty hospitals take Medicaid patients was true. **Mrs. Dalton** answered she didn't know, but would find out before the Committee took executive action. **SEN. WEINBERG** requested her to get information on the ratio of private pay for medicare patients, as well.

SEN. CROMLEY asked **Mr. Flink** if specialty hospitals were required to provide 24-hour emergency care. **Mr. Flink** answered that, in

general terms of definition, "specialty hospitals" means hospitals primarily or exclusively engaged in care or treatment of one of the following categories; patients with a cardiac condition, patients with an orthopedic condition, patients receiving a surgical procedure, any other specialized categories services the secretary of Health and Human Services designates as being consistent with the purpose of permitting physician ownership and investment in a hospital under this section.

Closing by Sponsor:

SEN. HARRINGTON said an amendment to grandfather in the existing specialty hospitals was fine with him. Thirty cents out of every dollar we pay for health care goes for people who don't have health care. This is one of the reasons he felt strongly we should protect non-specialty hospitals.

HEARING ON SB 446

Opening Statement by Sponsor:

SEN. TRUDI SCHMIDT (D), SD 11, opened the hearing on **SB 446**, Providing for formation and operation of family councils in nursing homes.

SEN. SCHMIDT said this is not a one-area problem, she had done considerable research before she agreed to carry the bill. She found people felt it important to be comfortable with the care of their parents or loved ones, when in nursing facilities.

Proponents' Testimony:

Kathy Doughty, Montana Nurses' Association, rose in support of the bill. She presented testimony from a daughter of a nursing home resident in Dillon.

EXHIBIT (phs38a04)

Alana Kietzmen, Montana Long Term Care Ombudsman, said she supports the bill. Some residents do not have family members close-by, therefore the councils can assist them with problems. The councils advocate and give support to families. She handed the committee information on family councils and the ombudsman program.

EXHIBIT (phs38a05)

EXHIBIT (phs38a06)

Beverly McCoy, representing herself, rose in support of Family Council. Her mother is an Alzheimer's patient in a nursing home. She read her testimony.

EXHIBIT (phs38a07)

Betty Beverly, Executive Director, Montana Senior Citizens Association, a certified Montana Ombudsman, said she also had a mother in a nursing home. She said family councils are good. When visiting her mother one day, she saw a lady who was concerned about her grandmother and didn't know how to resolve the nursing home problem. She offered her assistance. With a family council, there would have been an alternative for the lady to resolve her problems.

Claudia Clifford, AARP, told the Committee the bill provides important guidance on rights for people in nursing homes and the families of these people. She said the bill encourages family participation in the care of their family members and this is important.

Opponents' Testimony:

Rose Hughes, Montana Health Care Association, felt the bill was unnecessary as there are federal regulations and guidelines that address issues related to family councils. She read her testimony and presented the Committee with testimony from family members of a resident at Parkview Care and Rehab, Dillon, and a staff letter from the center opposing the legislation. She handed out copies of federal regulations and interpretive guidelines information; residents rights and responsibilities form; and a state operations manual. These are in the following exhibits.

EXHIBIT (phs38a08)

EXHIBIT (phs38a09)

EXHIBIT (phs38a10)

EXHIBIT (phs38a11)

EXHIBIT (phs38a12)

Jeff Smith, Administer, Benefis Skilled Nursing Center, Great Falls, read his testimony in opposition of **SB 446**.

EXHIBIT (phs38a13)

SEN. BILL TASH, SD 36, pointed out page 3, line 7, where it said "facility staff or management shall invite a family council representative to attend exit interviews". He thought this could result in medicare and medicaid reimbursement factors which could

be interrupted. He said the bill was contradictory to federal standards and the Committee should consider the serious unintentional consequences of the bill.

Pat Melby, Montana Medical Association, said federal regulations already require this in long term care facilities. This would require more paperwork and nursing homes are already bogged down with work. Care and maintenance can be addressed by complaining to the Department of Public Health and Human Services and they will have a survey team there right away. The department will require resolution if the problem is legitimate.

Sharon Maharg, Registered Nurse, Lantis Enterprises, said families are comfortable coming to them with problems. They support the concerns of these families and work hard to remedy their problems. They have a grievance procedure, and have information posted on the internet. There are federal guidelines they must follow.

Deanne Smallwood, Administrator Village Health Care Center, Missoula, with 194 beds, has a family council but it is poorly attended. They have an open door policy and have an education program. Families are welcome at their building day and night. They have chairs that make into beds so family or a friend can stay over night. There is access to showers. They send out discharge surveys, have ombudsmen and refer families to them. She did not see this as a necessary bill.

Janie McCall, Deaconess Billings Clinic, opposed the legislation.

Denise Licata, Registered Nurse and Director, Sage Company, said her concern was TIPA. As a quality assurance person, quality improvement has been a process that has worked well for their facility and works for other industries.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. SCHMIDT thanked the Committee for a good hearing.

EXECUTIVE ACTION ON SB 324

Motion: SEN. GRIMES moved that SB 324 DO PASS.

Discussion: SEN. GRIMES asked if leveraging of the Medicaid discount will jeopardize the inclusion or exclusion of drugs from the list, or if the rebates would affect the Medicaid program. **Chuck Hunter, DPHHS,** told him the two are separate. Under the bill they would adopt a separate preferred drug list. Denver did not see a problem doing it this way.

Motion/Vote: SEN. WEINBERG moved that SB 324 BE AMENDED WITH SB032401.ADN. Motion carried unanimously by voice vote.

EXHIBIT (phs38a14)

SEN. GRIMES asked if this refers to the new program being set up. **Ms. Clifford,** said it is relevant to the pharmacy discount program and not Medicaid.

Motion: SEN. WEINBERG moved that SB 324 BE AMENDED WITH SB032401.ASB.

Discussion: This amendment refers to secondary rebates, puts in an effective date and puts in cost effectiveness relative to prescriptions.

Vote: Motion carried unanimously by voice vote.

EXHIBIT (phs38a15)

Motion: SEN. SCHMIDT moved that SB 324 BE AMENDED WITH SB032402.ADN.

Discussion: SEN. SCHMIDT asked **Ms. Clifford** to comment on the amendment. **Ms. Clifford** said the pharmacists had concerns about mail order prescriptions. The amendment says that, with the discount card program, it's voluntary for pharmacists to participate to provide a certain level of discounts; that they would not have the program set up to use mail order. If there is inadequate access for rural areas, they could provide access to mail order.

Vote: Motion carried unanimously by voice vote.

EXHIBIT (phs38a16)

{Tape: 1; Side: B; Approx. Time Counter: 38.9 - 49.6}

Motion: SEN. SCHMIDT moved that SB 327 DO PASS AS AMENDED.

Discussion: SEN. GRIMES asked Mr. Hunter if he anticipated having to go to CMS for any further notification or approval. Mr. Hunter did not anticipate having to ask for a waiver. They do anticipate submitting a State Plan Amendment to allow them to obtain the same discounts they get in the multi-state pool arrangement. They anticipate setting up a parallel preferred drug list; not mandate in any way people on the Medicaid preferred drug list must come over; and do the same thing on the discount drug preferred list.

SEN. GRIMES asked Ms. Clifford if she could give the Committee assurance they would not use the lists against the pharmacies. Ms. Clifford said the purpose is to provide some kind of drug discount to people. They are trying to get the pharmacists, on a voluntary basis, to give a discount under the Medicaid rate and to get rebates from the pharmaceutical companies to provide secondary deeper discounts to these uninsured people. SEN. GRIMES asked if this would be directing senior citizens to the discounts as well. Ms. Clifford answered they do everything they can to encourage consumers to try to take advantage of discounts.

SEN. GRIMES asked for a response from Mr. Colbo. Mr. Colbo said they have concerns with the bill and are working with the Department for improving this.

Vote: Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 446

SEN. CROMLEY did not like the concept of the bill.

Motion/Vote: SEN. CROMLEY moved that SB 446 BE TABLED. Motion carried unanimously by voice vote. SEN. COBB voted aye by proxy.

EXECUTIVE ACTION ON SB 317

Motion: SEN. ESP moved that SB 317 BE AMENDED WITH SB031702.ASB.

Discussion: This amendment clarifies the bill. It puts in more intent and speaks to assets.

Vote: Motion carried unanimously by voice vote.

EXHIBIT (phs38a17)

Motion: SEN. COBB moved that SB 317 BE AMENDED WITH SB031701.ASB.

Discussion: SEN. GRIMES asked about the amendments and SEN. COBB reviewed the amendments with the Committee. The amendments came out of the 42 amendments presented by Blue Cross Blue Shield. **Patrick Driscoll, Chief Council, State Auditor's Office** said the Attorney General, Legislative Council and Code Commissioner reviewed the amendments. Of the 42, 25 were fine with all concerned and are included in SEN. COBB's amendments. They objected to eleven of the 42 amendments, and six were further amended.

EXHIBIT (phs38a18)

{Tape: 2; Side: A; Approx. Time Counter: 0 - 37.4}

SEN. GRIMES asked about amendments 17 and 18 on page 4, lines 12 through amendment #25. On page 4 it says public record will be kept confidential to the extent you can by law. He asked **Mr. Driscoll** to re-describe rule making authority. This was referred to **Mr. Tweeten**, who told him rule making authority, with the amendment, would require us to develop procedures under which proprietary information or trade secrets, may be kept confidential to the extent the law allows. He said this is consistent with #25. SEN. GRIMES didn't think they were the right rules for implementing HIPPA. **Mr. Tweeten** said in rule making, we are adopting procedures the Auditor's Office and Attorney General will have to use in handling and consideration of the applications. When you send in an application to convert a company, the State would authorize you to designate in your application any materials you believe are proprietary or trade secret information. Current laws require the State to review this information and keep it proprietary and confidential unless convinced it was not properly claimed as such. The rule would then provide us to give the company notice of any of those designated materials we intended to include in public record and the company could then come in and contest that. SEN. GRIMES asked if the companies would have recourse against the agency if that were violated. **Mr. Tweeten** answered if an agency acquires something that is a trade secret, which is a property right under Montana law, and improperly discloses that trade secret and deprives its value, a talking point could be brought against the agency for doing that.

{Tape: 2; Side: A; Approx. Time Counter: 37.4 - 43}

SEN. GRIMES asked for an explanation of amendment #20. **Mr. Tweeten** said the problem this particular language was designed to

address was a situation in which the company contemplates a transaction and they believe one of the exceptions put into the bill, from the definition of conversion transaction, applies so they don't have to file an application at all. If the transaction comes to light, and the Auditor's Office thinks it looks like a conversion transaction and they should have brought it to them through an application, this language allows us to go to court and get it declared for a judgement that they needed to bring an application with respect to this transaction. One of the problems, when drafting the bill, was the company knows what their transactions are and they make the decision on what is and what is not a conversion transaction subject to the law. We don't have any access to that decision until it is already made and they file the application. If they don't file an application, and they think it is not a conversion, then that decision may be right or wrong. If the State is bound by their decision not to file an application, then a lot of teeth in this bill will be gone. We need this provision so, if we get wind of one of these transactions, we can get a judge to look at this.

{Tape: 2; Side: A; Approx. Time Counter: 43 - 48.1}

Vote: Motion carried unanimously by voice vote.

Motion: SEN. COBB moved that SB 317 DO PASS AS AMENDED.

{Tape: 2; Side: A; Approx. Time Counter: 48.1 - 50.9}

Discussion: SEN. GRIMES asked to discuss amendments from Blue Cross Blue Shield which were left out of the preceding amendments. This sheet has 14 amendments. **Mr. Tweeten**, went through the individual amendments.

EXHIBIT(phs38a19)

EXHIBIT(phs38a20)

{Tape: 2; Side: A; Approx. Time Counter: 50.9 - 64.4}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 13.4}

SEN. GRIMES still had problems with the bill. He asked **Tanya Ask, Blue Shield Blue Cross** to respond to the amendments. **Mrs. Ask** said she had looked through them and she said amendment 17 seems it will work as far as trade secrets. They will go back and look at this again. She would like to double check amendment #25. Amendment #28 regarding the 5% limit, is to make sure the expenses are not unreasonable. **SEN. GRIMES** thought a 5% compromise or some percentage cap could be put on this limit. **Mr. Driscoll** said the term reasonable applies to different fees which don't have a dollar amount. In these cases they have to

determine what's reasonable. **Mrs. Ask** said when they questioned not having the denominator determining the amount, they were looking at their value and the \$5 million would automatically be the lesser of this.

{Tape: 2; Side: B; Approx. Time Counter: 13.4 - 21.1}

Vote: Motion carried unanimously by voice vote. **SEN. WEINBERG** voted aye by proxy.

EXECUTIVE ACTION ON SB 281

Motion: **SEN. SCHMIDT** moved that SB 281 DO PASS.

Motion: **SEN. GRIMES** moved that SB 281 BE AMENDED WITH SB028101.ADN.

Discussion: He felt there should be some pressure on the sponsors to respond. **SEN. SCHMIDT** asked **Janet Ellis, Montana Audubon**, to respond to the amendment. **Mrs. Ellis** said there could be some mischief in this if you had a sponsor not willing to do much.

EXHIBIT (phs38a21)

{Tape: 2; Side: B; Approx. Time Counter: 21.1 - 29.3}

Vote: Motion carried 7-1 by voice vote with **SEN. CROMLEY** voting no.

SEN. WILLIAMS presented amendment SB028102.adn.

EXHIBIT (phs38a22)

SEN. WILLIAMS said these amendments were worked out with the department. **SEN. GRIMES** thought (iii) was insignificant and shows the problem with the bill in the first place. He said it opens up the action and somebody could allege the case. **SEN. WILLIAMS** said it solves the problem of the agency not understanding where they are going. They can't arbitrarily ignore it.

SEN. ESP asked **Mr. Niss** if arbitrary or capricious have a legal meaning. **Mr. Niss** thought it was pretty much the same as Webster's definition. In this language, the record has to demonstrate this.

Motion/Vote: SEN. WILLIAMS moved that SB 281 BE AMENDED WITH SB028102.ADN. Motion carried 7-2 with SEN. ESP and SEN. GRIMES voting no.

Motion/Vote: SEN. WILLIAMS moved that SB 281 DO PASS AS AMENDED. Motion carried 5-4 by roll call vote with SEN. COBB, SEN. ESP, SEN. GRIMES, and SEN. O'NEIL voting no. SEN. WEINBERG voted aye by proxy.

{Tape: 2; Side: B; Approx. Time Counter: 29.3 - 40.3}

ADJOURNMENT

Adjournment: 7:00 P.M.

SEN. BRENT R. CROMLEY, Chairman

RITA TENNESON, Secretary

BC/rt

Additional Exhibits:

EXHIBIT ([phs38aad0.PDF](#))